

AMENDED IN ASSEMBLY MAY 17, 2006

AMENDED IN ASSEMBLY MAY 2, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2218

Introduced by Assembly Member Torrico
(Coauthors: Assembly Members Klehs and Lieu)

February 22, 2006

An act to add and repeal Section 6377 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2218, as amended, Torrico. Sales and use taxes: exemption: manufacturing equipment.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property and provides various exemptions from the taxes imposed by that law.

This bill would declare the intent of the Legislature to exempt from those taxes the sale of, and the storage, use, or other consumption of, manufacturing equipment used in the manufacturing process.

The bill would further exempt from those taxes, for calendar years beginning on or after January 1, 2007, the gross receipts from the sale of, and the storage, use, or other consumption of, tangible personal property, as defined, purchased for use by a qualified person, as defined, in manufacturing, processing, refining, fabricating, or recycling of property, and introduced into the process, as specified, and tangible personal property purchased for use by a contractor for specified purposes.

This bill would specify that this exemption does not apply to local sales or transactions and use taxes.

This bill would also specify that the exemption would remain in effect only for 10 calendar years after it first becomes operative, and would be repealed on January 1 of the first calendar year thereafter.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to enact a Job
2 Retention and Economic Recovery Act that would provide for an
3 exemption of purchases of manufacturing equipment used in the
4 manufacturing process from the state sales and use taxes.

5 SEC. 2. Section 6377 is added to the Revenue and Taxation
6 Code, to read:

7 6377. (a) (1) For calendar years beginning on or after
8 January 1, 2007, there are exempted from the taxes imposed by
9 this part the gross receipts from the sale of, and the storage, use,
10 or other consumption in this state of, any of the following:

11 (A) Tangible personal property purchased for use by a
12 qualified person to be used primarily in any stage of the
13 manufacturing, processing, refining, fabricating, or recycling of
14 property, beginning at the point any raw materials are received
15 by the qualified person and introduced into the process and
16 ending at the point at which the manufacturing, processing,
17 refining, fabricating, or recycling has altered property to its
18 completed form, including packaging, if required.

19 (B) Tangible personal property purchased for use by a
20 contractor purchasing that property either as an agent of a
21 qualified person or for the contractor's own account and
22 subsequent resale to a qualified person for use in the performance
23 of a construction contract for the qualified person who will use
24 the tangible personal property as an integral part of the
25 manufacturing, processing, refining, fabricating, or recycling
26 process, or as a storage facility for use in connection with the
27 manufacturing process.

1 (2) This exemption shall not apply to any tangible personal
2 property that is used primarily in administration, general
3 management, or marketing.

4 (b) For purposes of this section:

5 (1) "Fabricating" means to make, build, create, produce, or
6 assemble components or property to work in a new or different
7 manner.

8 (2) "Manufacturing" means the activity of converting or
9 conditioning property by changing the form, composition,
10 quality, or character of the property for ultimate sale at retail or
11 use in the manufacturing of a product to be ultimately sold at
12 retail. Manufacturing includes any improvements to tangible
13 personal property that result in a greater service life or greater
14 functionality than that of the original property.

15 (3) "Primarily" means tangible personal property used 50
16 percent or more of the time in an activity described in
17 subdivision (a).

18 (4) "Process" means the period beginning at the point at which
19 any raw materials are received by the qualified taxpayer and
20 introduced into the manufacturing, processing, refining,
21 fabricating, or recycling activity of the qualified taxpayer and
22 ending at the point at which the manufacturing, processing,
23 refining, fabricating, or recycling activity of the qualified
24 taxpayer has altered tangible personal property to its completed
25 form, including packaging, if required. Raw materials shall be
26 considered to have been introduced into the process when the
27 raw materials are stored on the same premises where the
28 qualified taxpayer's manufacturing, processing, refining, or
29 recycling activity is conducted. Raw materials that are stored on
30 premises other than where the qualified taxpayer's
31 manufacturing, processing, refining, fabricating, or recycling
32 activity is conducted, shall not be considered to have been
33 introduced into the manufacturing, processing, refining,
34 fabricating, or recycling process.

35 (5) "Processing" means the physical application of the
36 materials and labor necessary to modify or change the
37 characteristics of property.

38 (6) "Qualified person" means any of the following:

39 (A) A person who is *primarily* engaged in those lines of
40 business described in Codes 3111 to 3399, inclusive, or 5112 of

1 the North American Industrial Classification System (NAICS)
2 published by the United States Office of Management and
3 Budget (OMB), 2002 edition.

4 (B) An affiliate of a person qualified pursuant to subparagraph
5 (A) shall also be considered a qualified person as long as the
6 affiliate is included as a member of that person's unitary group
7 for which a combined report is required to be filed under Article
8 I (commencing with Section 25101) of Chapter 17.

9 (7) "Refining" means the process of converting a natural
10 resource to an intermediate or finished product.

11 (8) "Tangible personal property" does not include any of the
12 following:

13 (A) Consumables with a normal useful life of less than one
14 year, except as provided in subparagraph (E) of paragraph ~~(10)~~
15 (9).

16 (B) Furniture, inventory, and equipment used in the extraction
17 process, or equipment used to store finished products that have
18 completed the manufacturing process.

19 (9) "Tangible personal property" includes, but is not limited
20 to, all of the following:

21 (A) Machinery and equipment, including component parts and
22 contrivances such as belts, shafts, moving parts, and operating
23 structures.

24 (B) All equipment or devices used or required to operate,
25 control, regulate, or maintain the machinery, including, without
26 limitation, computers, data processing equipment, and computer
27 software, together with all repair and replacement parts with a
28 useful life of one or more years therefor, whether purchased
29 separately or in conjunction with a complete machine and
30 regardless of whether the machine or component parts are
31 assembled by the taxpayer or another party.

32 (C) Property used in pollution control that meets or exceeds
33 standards established by this state or any local or regional
34 governmental agency within this state.

35 (D) Special purpose buildings and foundations used as an
36 integral part of the manufacturing, processing, refining, or
37 fabricating process, or that constitute a research or storage
38 facility used during the manufacturing process. Buildings used
39 solely for warehousing purposes after completion of the
40 manufacturing process are not included.

1 (E) Fuels used or consumed in the manufacturing process.

2 (c) (1) No exemption shall be allowed under this section
3 unless the purchaser furnishes the retailer with an exemption
4 certificate, completed in accordance with any instructions or
5 regulations as the board may prescribe, and the retailer
6 subsequently furnishes the board with a copy of the exemption
7 certificate. The exemption certificate shall contain the sales price
8 of the machinery or equipment that is exempt pursuant to
9 subdivision (a).

10 (2) *Beginning for calendar year 2008, in order to maintain*
11 *eligibility for the exemption under this section, the qualified*
12 *person shall provide to the board evidence of the following:*

13 (A) *The number of employees employed in the state during the*
14 *first quarter of 2007.*

15 (B) *For calendar years 2008 to 2017, employs the same*
16 *number or a greater number of employees in the state than the*
17 *first quarter of 2007 during the first quarter of the current year*
18 *and reports those numbers to the board on or before May 1 of the*
19 *current year.*

20 (3) *All employment numbers reported to the board under this*
21 *subdivision shall be the same as the number reported to the*
22 *Employment Development Department on the first quarter*
23 *Quarterly Wage and Withholding Report (DE-6).*

24 (4) *If a qualified person becomes ineligible during the current*
25 *fiscal year due to failure to timely report or due to decreases in*
26 *the number of employees employed by the qualified person, then*
27 *that qualified person shall reimburse to the board any exemption*
28 *taken under this section during that current calendar year, but*
29 *shall not be required to pay back exemptions taken under this*
30 *section in previous years of eligibility. The qualified person may*
31 *become eligible in future calendar years if employment numbers*
32 *are above those reported for the first quarter of 2007, and the*
33 *qualified person satisfies other reporting requirements.*

34 (d) Notwithstanding any provision of the Bradley-Burns
35 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
36 with Section 7200)) or the Transactions and Use Tax Law (Part
37 1.6 (commencing with Section 7251)), the exemption established
38 by this section shall not apply with respect to any tax levied by a
39 county, city, or district pursuant to, or in accordance with, either
40 of those laws.

(e) (1) Notwithstanding subdivision (a), the exemption provided by this section shall not apply to any sale or use of property which, within three years from the date of purchase, is either removed from California or converted from an exempt use under subdivision (a) to some other use not qualifying for the exemption. *The taxpayer that has received the exemption under this section for purchasing qualifying personal property shall notify the board if the property is either removed from California or converted from an exempt use under subdivision (a) within three years from the date of purchase.*

(2) Notwithstanding subdivision (a), the exemption established by this section shall not apply with respect to any tax levied pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(f) If a purchaser certifies in writing to the seller that the property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax, and ~~within one year~~ *three years* from the date of purchase, the purchaser (1) removes that property outside California, (2) converts that property for use in a manner not qualifying for the exemption, or (3) uses that property in a manner not qualifying for the exemption, the purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the property at the time the property is so removed, converted, or used, and the sales price of the property to the purchaser shall be deemed the gross receipts from that retail sale.

(g) This section applies to leases of tangible personal property classified as “continuing sales” and “continuing purchases” in accordance with Sections 6006.1 and 6010.1. The exemption established by this section shall apply to the rentals payable pursuant to such a lease, provided the lessee is a qualified person and the property is used in an activity described in subdivision (a). ~~Rentals that meet the foregoing requirements are eligible for the exemption for a period of six years from the date of commencement of the lease. At the close of the six-year period from the date of commencement of the lease, lease receipts are subject to tax without exemption.~~

1 (h) This section shall remain in effect only for 10 calendar
2 years after this section first becomes operative, and shall be
3 repealed on January 1 of the first calendar year thereafter.

4 SEC. 3. This act provides for a tax levy within the meaning of
5 Article IV of the Constitution and shall go into immediate effect.

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